



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774

OR95-686

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 32967.

The Office of the Comptroller of Public Accounts (the "comptroller") has received a request for "a Texas Sales Tax Resale Certificate issued by Marshall Petroleum, Inc. on November 22, 1985." By way of background, you explain that

[t]ypically, an individual who wishes to make a qualified tax exempt purchase asks the vendor for a resale certificate, fills it out, signs it, and leaves it with the vendor. Generally, taxpayers (vendors) are not required to file resale certificates with this agency. Therefore, resale certificates are usually not part of the records maintained by this agency. Typically, resale certificates only become part of this agency's files when a vendor is audited.

See generally Tax Code §§ 151.151 - .154 (providing for resale certificates). You further explain that the comptroller obtain the requested document during the course of an audit of the vendor's business.

You believe sections 111.006 and 151.027 of the Tax Code deem the requested document confidential, and that they, incorporated into section 552.101 of the Government Code, therefore prohibit the comptroller from releasing the document to the requestor even though the requestor's company issued the requested document. You have submitted a copy of the requested information for our review. *See* Gov't Code § 552.303 (requiring governmental body that requests attorney general decision on open records request to supply to attorney general specific information requested).

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” As we have suggested, you believe sections 111.006 and 151.027 of the Tax Code deem the requested information confidential.

Chapter 111 of the Tax Code pertains to the comptroller’s power to collect taxes. *See* Tax Code § 111.001; *see also id.* § 111.0021. Section 111.004 authorizes the comptroller to examine all books, records, and papers of a corporation permitted to do business in this state. Furthermore, pursuant to section 111.0043, the comptroller may audit any taxpayer to determine that taxpayer’s tax obligation. Section 111.006(a)(2) deems confidential all information the comptroller obtains “during the course of an examination of the taxpayer’s books, records, papers, officers, or employees.” Such information is not open to public inspection, nor may it be disclosed, unless subpoenaed in a judicial or administrative proceeding in which the state is a party. *Id.* § 111.006(a), (b). We do not understand the judicial or administrative proceeding exception to apply here.

Chapter 151 of the Tax Code imposes and provides for the collection of sales and use taxes. *See id.* §§ 151.051, .101 (imposing sales tax and use tax). Section 151.023 authorizes the comptroller to “examine the books, records, papers, and equipment of a person who sells taxable items or of a person liable for the use tax” Section 151.027(b) deems confidential information the comptroller obtains during the course of such an examination. The information is expressly excepted from public inspection unless permitted by section 151.027(c). *Id.* § 151.027(b). We understand that none of the exceptions listed in subsection (c) apply in this situation.¹

Sections 111.006 and 151.027 clearly deem the requested information confidential. Furthermore, we find no exception authorizing the release of the requested information to the individual who originally completed the form.² Accordingly, we conclude section 552.101 of the Government Code, incorporating sections 111.006 and 151.027 of the Tax Code, requires the comptroller to withhold the requested information from the requestor.

¹Section 151.027(c)(2) sanctions the “delivery to a taxpayer . . . of a copy of a report or other paper filed by the taxpayer under this chapter.” Whether or not the requestor is a “taxpayer” for purposes of section 151.027, we understand the requested document is not a report or other paper filed under chapter 151. Accordingly, subsection (c)(2) is inapplicable.

²Section 552.023 of the Government Code provides a person with a “special right of access” to records held by a governmental body that contain information relating to the person. This special right of access does not apply where a specific statute makes particular information confidential, however. Open Records Decision No. 587 (1991) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 of the Government Code regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 32967

Enclosures: Submitted documents

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(w/o enclosures)